

ORDINANCE No. 118120

COUNCIL BILL No. 111226

*Public Department*

INDEXED

The City of Seattle--Legislat

REPORT OF COMMITTEE

Honorable President:

Your Committee on \_\_\_\_\_

to which was referred the within Council Bill No. \_\_\_\_\_  
report that we have considered the same and respectfully recomme

*Passed 2-0.*

*Full Council vote 5-0*

COMPTROLLER FILE No. \_\_\_\_\_

Introduced: <i>4-29-96</i>	By: <i>Choe</i>
Referred: <i>4-29-96</i>	To: <i>Fin's Bud</i>
Referred:	To:
Referred:	To:
Reported: <i>MAY - 6 1996</i>	Second Reading: <i>MAY - 6 1996</i>
Third Reading: <i>MAY - 6 1996</i>	Signed: <i>MAY - 6 1996</i>
Presented to Mayor: <i>MAY - 7 1996</i>	Approved: <i>MAY 13 1996</i>
Returned to City Clerk: <i>MAY 14 1996</i>	Published: <i>Full</i>
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:



Committee Chair

BB:et  
04/19/96  
ver. 1

ORDINANCE

118120

AN ORDINANCE related to women and minority business enterprises;  
amending SMC Sections 20.46A.090B.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. SMC Section 20.46A.090B is amended as follows:

B. In addition to such other requirements as may be set forth elsewhere, the following shall apply to all contracts entered into by the City and to all contracts where funds are administered or provided by the City through grants, loans, or other forms of financing:

1. Bid conditions, requests for proposals, and all other specifications shall require the bidder or proposer to make affirmative efforts to subcontract to or to purchase from WMBEs, and to commit to meeting the WBE and MBE set-asides, if any, established for the project. Requests for proposals for projects on which WMBE set-asides have been waived under SMC Section 20.46A.150 shall require proposers to document the efforts made to contact WMBEs in developing the proposal.

2. When set-asides greater than zero are established for a contract, the contracts shall include the following provision:

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

1           This contract hereby incorporates by reference  
2       Seattle Municipal Code (SMC) Ch. 20.46A. The failure of the  
3       contractor       or subcontractor to comply with any of the  
4       requirements of SMC Ch. 20.46A shall be a material breach of  
5       contract. The purpose of Seattle's WMBE Program is to  
6       provide a prompt remedy for the effects of past  
7       discrimination. The City in general, and this Program in  
8       particular, are damaged when a contract, or portion of a  
9       contract, to be performed by a WBE or MBE is not actually  
10      performed by a WBE or MBE in compliance with SMC Ch. 20.46A.  
11      Because the actual amount of such damage is not reasonably  
12      calculable, the parties agree and stipulate that liquidated  
13      damages equal to the unmet dollar amount of any WBE or MBE  
14      set-aside will fairly compensate the City for resulting  
15      delays in carrying out the purpose of the program, the costs  
16      of meeting utilization targets through additional contracts,  
17      the administrative costs of investigation and enforcement,  
18      and other damages and costs caused by the violation.

19           3. Contracts, other than leases, shall require that  
20      during the term of the contract, the contractor shall:  
21           a. Meet the WBE and MBE set-asides established  
22      for the contract, if any;  
23             
24             
25           

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1                   b. Make affirmative efforts to utilize WMBEs in  
2 performing the contract, whether as subcontractors, suppliers,  
3 or in any other capacity;

4                   c. Require that all subcontractors make  
5 affirmative efforts to utilize WMBEs in performance of the  
6 contract;

7                   d. Maintain records reasonably necessary for  
8 monitoring compliance with the provisions of this chapter, and  
9 submit such information as may be requested by the Director in  
10 order to monitor and enforce compliance; and

11                   e. Require that subcontractors maintain records  
12 reasonably necessary for monitoring the subcontractors'  
13 compliance with the provisions of this chapter, and that the  
14 subcontractors submit such information as may be requested by the  
15 Director in order to monitor and enforce compliance.

16                   4. No contract shall be awarded to any person or  
17 business that is disqualified from doing business with the City  
18 under the provisions of this chapter or of SMC Chapter 20.44 or  
19 20.46, as now or hereafter amended. No contractor shall  
20 subcontract to, or purchase supplies, materials, or services  
21  
22  
23  
24  
25

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1 from, any person or business which is disqualified from doing  
2 business with the City under the provisions of this chapter or of  
3 SMC Chapter 20.44 or 20.46, as now or hereafter amended.

4 5. The Director may exempt contracts, including leases  
5 of City-owned facilities, from any or all of the requirements of  
6 this subsection B if it would not impair the purposes of the WMBE  
7 program.

8  
9 Section 2. Any acts done consistent with and prior to the  
10 effective date of this ordinance are hereby ratified and  
11 confirmed.

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1 Section 3. This order shall become effective and be in force  
2 thirty (30) days from the date of approval by the Mayor, but if  
3 not approved and returned to the Mayor within ten (10) days after  
4 presentation, it shall take effect as provided by Municipal Code  
5 Section 1.04.020.  
6

7 Passed by the City Council the 6 day of May,  
8 1996, and signed by me in open session in authentication of its  
9 passage this 6 day of May, 1996.  
10

11 Mark A. Hale  
12 President ~~Pro Tem~~ of the City Council

13 Approved by me this 13 day of May, 1996.  
14

15 Norman B. Fox  
16 Mayor

17 Filed by me this 14 day of May, 1996.  
18

19 Joan E. Pippin  
20 City Clerk

21 (Seal)  
22  
23

24 ref: FacSvc Ord/Agmt No. 6 (WMBLEA2.DOC)  
25

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RECEIVED OMP

APR 22 1996



City of Seattle  
Department of Administrative Services

Kenneth J. Nakatsu, Director  
Norman B. Rice, Mayor

MEMORANDUM

April 18, 1996

TO: The Honorable Martha Choe  
Seattle City Council

VIA: Monica Power  
Office of Management and Planning

FROM: Ken Nakatsu, Director  
Department of Administrative Services

SUBJECT: Proposed legislation to amend Seattle Municipal Code Ch. 20.46 (A) clarifying that WMBE language shall be included in contracts only where WMBE set-asides are applicable, and to allow the Director of the Department of Administrative Services to exempt contracts from provisions of the Ordinance where it does not impair the purposes of the WMBE program.

The Department of Administrative Services (DAS) is proposing minor changes to the Women and Minority Business Enterprise (WMBE) Ordinance which would make the Ordinance appropriately flexible to address the many and varied contractual agreements the City enters into. The proposed revisions are intended to clarify the Ordinance's application and not to alter its scope.

As part of our effort to streamline City contracting processes, we are reviewing our documents to determine whether all provisions included are appropriate and necessary, they are written clearly and succinctly, and they include language that accomplishes the City's goals.

Leasing is one area of contracting in which the City's intent and the language which is required in the agreement are inconsistent and unclear. The same WMBE language, developed to address construction and consultant contracts, is required in all contracts, yet it is not clear how the City would apply the WMBE boilerplate language and provisions to leases. The contractual relationship with the lessee or lessor is related solely to the occupancy of space. The language threatens the lessee/lessor with, among other things, liquidated damages for not complying with the Ordinance by making "best efforts" to contract with WMBE contractors/vendors.

We do not believe that the language was intended to apply to the routine conduct of business by lessees/lessors related to the occupancy of the leased premises. However, the language is ambiguous enough to be interpreted that way. In this type of contractual relationship, lessees/lessors perceive that the City does not have the authority to impose criteria on their business activities, and therefore, are reluctant to enter into agreements containing the Ordinance mandated language.

Ad: Equal employment opportunity - affirmative action - employer

City of Seattle, Department of Administrative Services, 12th Floor, Alsea Building, 618 Second Avenue, Seattle, Washington 98104-2014 (206) 266-1234  
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Honorable Martha Choe  
Proposed legislation to amend Seattle Municipal Code Ch. 20.46  
4/18/96  
Page 2

The application of the WMBE language to leases has always been of concern but the difficulties inherent in the language have been highlighted as we attempt to market leases in Key Tower. We have entered a competitive leasing market, with the acquisition of Key Tower, and lack of clarity in how the WMBE Ordinance relates to leases will limit our ability to lease space, without furthering the goals of the Ordinance. The financial implications of leasing difficulties in Key Tower are significant.

While we do not believe that the City's intent with the WMBE ordinance was to intervene in the conduct of business related to the mere occupancy of leased premises, we do believe that the City clearly intended to provide opportunities for WMBE participation in City-funded tenant improvement construction. The proposed changes would allow increased clarity as to our interests in leasing and the required WMBE participation in City-funded tenant improvement construction. As such, this clarification would not in any way diminish the opportunities available to WMBE firms related to the design or construction of tenant improvement projects. Additionally, the City would avoid the confusion and ill will generated by inappropriate and inapplicable language in its contracts.

The need for clarification goes beyond leasing agreements. The Ordinance was designed with construction and consultant contracts in mind, however, the actual reach of the Ordinance is very broad. As drafted, the WMBE Ordinance requires the same language in all contracts that the City executes. Although the Ordinance is broad in its reach, our interests as they relate to WMBE in all our different and unique agreements is limited. In many types of contracts there are no WMBE opportunities available, and the required language serves only to confuse the other party. For example, when the City arranges for a second medical opinion on the condition of an employee's health, our contract with the physician requires the language, which has no clear applicability yet appears onerous in its requirements. This application is an ill-directed use of our efforts and in no way leads to the achievement of our goals.

The proposed revisions are intended to provide the needed clarity and, therefore, include phrasing that allows the Director of DAS to exempt contracts from provisions of the Ordinance in cases where it does not impair the intent of the WMBE program. These revisions do not diminish the powers available under the Ordinance in any way, rather, they simply give it the flexibility necessary for the City to rationally apply it to the City's varied business transactions and, thus, act responsibly in our business dealings.

Please be sure to call me at 684-0505, or Rod Brandon, if you have any questions or would like further information.

KN:MP:dac

cc: Rod Brandon  
Rodney Eng  
Norma Miller  
Mary Pearson

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**ROUTING SLIP FOR REQUEST FOR LEGISLATIVE ACTION**

Originating Department: Administrative Services

Council Sponsor:

Date: April 19, 1996

Subject: AN ORDINANCE related to women and minority business enterprises; amending  
SMC Sections 20.46A.090B.

Date  
Received

Date  
Forwarded

OMP: \_\_\_\_\_

Law: \_\_\_\_\_

Legislation should be rerouted in the order listed.

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# City of Seattle

Executive Department—Office of Management and Planning

Thomas M. Tierney, Director  
Norman B. Rice, Mayor

April 12, 1996

The Honorable Mark Sidran  
City Attorney  
City of Seattle

Dear Mr. Sidran:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING  
DEPARTMENT: Administrative Services

SUBJECT: AN ORDINANCE related to women and minority business enterprises; amending SMC Sections 20.46A.090B.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMP. Any specific questions regarding the legislation can be directed to Monica Power at 684-8076.

Sincerely,

Norman B. Rice  
Mayor

by

*Norman Power for*

TOM TIERNEY  
Director

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Enclosure



COPY RECEIVED  
96 APR 22 AM 9:29  
CITY ATTORNEY

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STATE OF WASHINGTON - KING COUNTY

68215  
City of Seattle, City Clerk

—ss.

No. ORDINANCE IN

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORD 118120

was published on

05/21/96

The amount of the fee charged for the foregoing publication is the sum of \$ , which amount has been paid in full.

Subscribed and sworn to before me on

Notary Public for the State of Washington,  
residing in Seattle

Affidavit of Publication

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